

MINUTES OF FIRE AND RESCUE AUTHORITY MEETING HELD ON 6 JUNE 2019

Present: Councillors C Atkins, R Berry, J Chatterley (Chair), K Choudhry, P Duckett, J Gambold, M Headley, D McVicar, K Malik, I Shingler and Y Waheed

CFO P Fuller, DCFO A Hopkinson and ACO G Chambers and Mr J Atkinson

19-20/FRA/1 Apologies

An apology for absence was received from Councillor Franks.

19-20/FRA/2 Membership

The Secretary and Monitoring Officer advised that the following five new Members had been appointed to the Authority: Councillors Gambold (Bedford Borough Council), Berry and Shingler (Central Bedfordshire Council) and Choudhry and Malik (Luton Borough Council).

The new Members were welcomed to the Authority.

19-20/FRA/3 Election of Chair 2019/20

In accordance with the Authority's Standing Orders, the Secretary and Monitoring Officer presided over the election of Chair.

Councillor Chatterley was nominated by Councillor Atkins and seconded by Councillor Duckett. There were no other nominations.

RESOLVED:

That Councillor Chatterley be elected Chair of the Fire and Rescue Authority for 2019/20.

19-20/FRA/4 Election of Vice Chair 2019/20

Councillor Waheed was nominated by Councillor Atkins and seconded by Councillor Choudhry. There were no other nominations.

RESOLVED:

That Councillor Waheed be elected Vice-Chair of the Fire and Rescue Authority for 2019/20.

(Note: Councillor Berry left the meeting at the conclusion of this item.)

19-20/FRA/5 Declarations of Disclosable Pecuniary and Other Interests

There were no declarations of disclosable pecuniary and other interests.

19-20/FRA/6 Communications

Letter from the Director of Fire and Resilience

A letter had been received from the new Director of Fire and Resilience, Luke Edwards, on the next stage of the spending review. A positive reference to the Fire and Rescue Indemnity Company (FRIC), of which the Authority was a founding member, had been included in the letter and it was suggested that this would lead to additional Fire and Rescue Authorities joining the company.

Trip to Kenya

Members had received an email from the previous Chair of the Fire and Rescue Authority, former Councillor Paul Downing, regarding the trip to Kenya. An update would be submitted to a future meeting of the Authority.

Royal Garden Party

The Deputy Chief Fire Officer had attended the Royal Garden Party on behalf of the Authority. It was noted that, if all Principal Officers had been given the opportunity to attend, the longest serving member of staff was nominated to represent the Authority at the event.

Appointment of Chief Constable

The Chief Fire Officer had been involved in the selection process for the appointment of the new Chief Constable. Deputy Chief Constable Garry Forsyth had been appointed.

Cheering Volunteering

The Chief Fire Officer had attended the "Cheering Volunteering" Awards at Central Bedfordshire Council on 4 June 2019. The Chair and Councillor McVicar had also been present at the event.

The Chief Fire Officer referred to an organisation called "Youth Voice" that was raising awareness about young people affected by knife crime.

Police Service Awards

The Chief Fire Officer had presented an award at the annual Police Service Awards held on 5 June 2019. Councillor Atkins was also present at the event.

Amphill Community Fire Station Open Day

The Amphill Community Fire Station Open Day had been held on 1 June 2019. Over £2000 had been raised for the Firefighter's Charity.

Luton Carnival

The Service had entered a float into the Luton Carnival.

19-20/FRA/7 Minutes

RESOLVED:

That the Minutes of the meeting held on 28 March 2019 be confirmed as a true record.

19-20/FRA/8 Public Participation

Members noted that no questions had been received in accordance with the public participation scheme approved at the meeting of the Fire and Rescue Authority held on 5 April 2000 (Minute 99/fa/94 refers).

19-20/FRA/9 Executive Committee 4 February 2019

Members received the Minutes of the meeting of the Executive Committee held on 4 February 2019 for information.

RESOLVED:

That the Minutes of the meeting of the Executive Committee held on 4 February 2019 be received.

19-20/FRA/10 Governance Review, Appointment of Committees and Other Groups

The Secretary and Monitoring Officer introduced his report requesting the Authority to make arrangements for decision making between meetings and to appoint Members to the Audit and Standards Committee, to represent the Authority on Strategic Partnerships and the Blue Light Collaboration Group and for reporting to the Constituent Councils.

In response to a question, the Secretary and Monitoring Officer confirmed that the terms of reference did not prohibit the Chair and Vice-Chair from sitting on the Audit and Standards Committee, although it would not be appropriate for them to hold the positions of Chair or Vice-Chair.

The structure of Policy and Challenge Groups would be discussed at the Member Development Day with a view to submitting a report to the next Authority meeting on 18 July 2019 and making appointments to those Groups at that time.

It was suggested and agreed that the arrangements be amended from those set out in the report to appoint three Members, one from each Constituent Council, to sit on an interim Executive with the Chair and Vice-Chair in the period until the Executive is appointed at the next Authority meeting.

RESOLVED:

1. That Councillors Chatterley, Duckett, Gambold, Headley, Malik and Waheed be appointed to the Audit and Standards Committee for 2019/20.
2. That Councillor Headley be appointed as Chair of the Audit and Standards Committee in 2019/20.
3. That decisions taken in between times, pending the appointment of an Executive Committee, be taken by the Chief Fire Officer in consultation with the Chair, Vice Chair and Councillors Atkins, Malik and McVicar.
4. That Councillors Atkins, Malik and McVicar be appointed to the Local Strategic Partnerships for 2019/20.
5. That Councillor McVicar be appointed as the Member representative for 2019/20 on the Blue Light Collaboration Group;
6. That Councillors Chatterley, Gambold and Waheed be authorised to report to their respective Constituent Council on the meetings of the Fire and Rescue Authority for 2019/20.

19-20/FRA/11 Representation on Local Government Association (LGA) Matters

The Secretary and Monitoring Officer introduced his report on the appointment of representatives to serve on Local Government Association (LGA) groups and to consider representation at the LGA Annual Fire Conference in March 2020.

RESOLVED:

1. That the Chair, Vice Chair, Councillor Atkins and Councillor McVicar be appointed to serve on the LGA General Assembly.
2. That the Chair be appointed as the Fire and Rescue Authority's representative on the LGA Fire Services Commission.
3. That the Chair, Vice Chair and Chief Fire Officer attend the LGA Annual Fire Conference on behalf of the Fire and Rescue Authority in March 2020.

19-20/FRA/12 Member Development

The Chief Fire Officer presented his report on the arrangements for Member development, including station visits, in 2019/20. He reminded Members that they were able to request items for discussion at the Member Development Days on 2 July 2019 and 29 October 2019.

It was agreed that all reports relating to the governance review be circulated to new Members of the Authority for information prior to the Member Development Day on 2 July 2019.

Consideration would also need to be given to attendance at the annual full Combined Fire Authorities' conference which was being held in Milton Keynes on 10 October 2019. As in the past, it was suggested that all Members were given the opportunity to attend the day event, with the Chair and Vice Chair nominated to attend the whole event.

RESOLVED:

1. That the arrangements for Member development in 2019/20 be confirmed.
2. That Councillors Berry, Choudhry, Gambold, Malik and Shingler be nominated to attend the LGA Fire Leadership Essentials Programme.
3. That the Chair and Vice Chair be nominated to represent the Authority at the full Combined Fire Authorities' conference in Milton Keynes on 10 October 2019 with all Members being given the opportunity to attend the day event.

19-20/FRA/13 Information Bulletin

Members received the information bulletin for 1 January to 31 March 2019.

The Chief Fire Officer reported that, in addition to the information bulletin and the blue bulletin, Members were also provided with a daily incident report via email. As Members had confirmed the value of receiving this information, the Chief Fire Officer advised that Members would continue to be advised of incidents but that the format may change.

In response to a question from the Chair on establishment numbers, the Chief Fire Officer advised that the staffing profile was actively managed and reviewed on a monthly basis. The numbers had decreased slightly in anticipation of the recruitment programme that would conclude in the Autumn.

The Chief Fire Officer also reported on a body recovery from the River Ouse that had been carried out by Bedfordshire Police using equipment installed by the Fire and Rescue Service.

Councillor McVicar suggested that a Member visit to the Fire Services College be arranged to coincide with the training of the new recruits.

RESOLVED:

That the information bulletin be received.

19-20/FRA/14 Audit and Standards Committee 12 April 2019

In discussing whether to pass the following resolution, Councillor Headley requested that his vote against excluding the public be recorded.

RESOLVED:

That, pursuant to Sections 100A(2) and 100A(4) of the Local Government Act 1972, the public be excluded from the discussion of the following item on the grounds that the matters to be discussed involve the likely disclosure of exempt information as defined in Paragraphs 1, 2 and 3 of Part 1 of Schedule 12A to the Act (as amended)

Members received the Minutes of the meeting of the Audit and Standards Committee held on 12 April 2019, along with the report submitted to that meeting and a statement prepared in consultation with the Chief Fire Officer and the external auditor following the meeting of the Committee.

The Secretary and Monitoring Officer reported that, at the request of the Committee, a meeting had been arranged between the Executive and the Chief Fire Officer to discuss this matter. Arising from this meeting, a statement had been produced for publication. This statement had been discussed with the Chief Fire Officer and the external auditor who had agreed its terms.

The Chair advised that the Audit and Standards Committee had been considering the issue for some months and that the new Members on the Authority had not been provided with the historical documentation relating to the investigation. It was acknowledged that this placed new Members of the Authority in a difficult situation, as they were being asked to make a decision without full knowledge of the background. However, given the length of time that had passed since the first consideration of this matter, Members agreed that they wished to reach a conclusion at this meeting.

As the Chair of the Audit and Standards Committee, Councillor Headley introduced the Minutes and expressed his disappointment in the statement that had been produced and queried why the Authority was not being asked to approve the report agreed by the Committee for external publication. He expressed the view that, whilst the decisions made were marginally legal, it could be that, after ratifying the decisions that had been made in 2010 and 2012, the Authority may wish to seek to negotiate future arrangements with the Chief Fire Officer, taking into account the Government guidance on the abatement of pensions

Members had a lengthy discussion about the implications of pursuing various courses of action, including whether the Authority could be vulnerable to a claim of unfair dismissal and its duty of care as an employer, as well as the governance failings which had led to the decisions being taken at that time and the measures that had since been put in place to improve the governance and decision making of the Authority, including the establishment of the Executive as a formal committee and the arrangements for recording decisions taken by the Executive Committee.

RESOLVED:

1. That the following past decisions of the Authority be acknowledged:
 - a. the decision taken by the Chair of the Authority (with the support of the Executive) to use the pensionable salary received by the Chief Fire Officer during his last full year of service as the basis for abating his pension when he retired and was re-engaged in February 2010.
 - b. the decision taken by the Chair of the Authority on 30 May 2012 (supported by the Executive and with the agreement of the Chief Fire Officer) to extend his fixed-term contract and apply abatement to the Chief Fire Officer's salary rather than his pension.
2. That the report prepared by the Secretary and Monitoring Officer for the meeting of the Audit and Standards Committee on 12 April 2019 be approved for publication, along with the statement regarding the pensions investigation that was agreed with the Chief Fire Officer.
3. That the Minute of this discussion be made public.

(Note: The Chief Fire Officer was not present during the consideration of this item).

The meeting ended at 12:42 pm

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FOR PUBLICATION

Bedfordshire Fire and Rescue Authority
Audit and Standards Committee
12 April 2019
Item No. 7

REPORT AUTHOR: SECRETARY/MONITORING OFFICER

SUBJECT: PENSIONS INVESTIGATION

For further information on this Report contact: John Atkinson
Tel No: 01234 845149

Background Papers: None

Implications (tick ✓):

LEGAL	✓	FINANCIAL	
HUMAN RESOURCES		EQUALITY IMPACT	
ENVIRONMENTAL		POLICY	
CORPORATE RISK	Known	OTHER (please specify)	
	New	CORE BRIEF	

Any implications affecting this report are noted at the end of the report.

PURPOSE:

To review the actions that the FRA has taken to examine the decisions taken between January 2009 and May 2012 regarding the pension paid to the Chief Fire Officer following his retirement in February 2010.

Item 7.1

RECOMMENDATION:

1. That the FRA be recommended to ratify:
 - (a) the decision taken by the Chair of the FRA (with the support of the Executive) to use the salary received by the CFO during his last full year of service as the basis for abating his pension when he retired and was re-engaged in February 2010.
 - (b) the decision taken by the Chair of the FRA on 30 May 2012 (supported by the Executive and with the agreement of the Chief Fire Officer) to extend his fixed term contract and apply abatement to the CFO's salary rather than his pension.
 2. That the Committee considers any further advice to give to the FRA about changes to the CFO's employment contract for the future.
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1. The Investigation

- 1.1 In August 2017 the Chief Fire Officer asked the Authority's Secretary/Monitoring Officer to examine and advise on the circumstances in which an allowance the CFO had received whilst he was seconded to Warwickshire County Council in 2009 was treated as pensionable. The Secretary/Monitoring Officer subsequently instructed external solicitors to carry out an independent investigation into the matter.

2. Report to Audit and Standards Committee

- 2.1 The outcome of this investigation was reported to the Audit and Standards Committee on 25 September 2018. The independent investigator criticised the manner in which the organisation took certain decisions about the Chief Fire Officer in 2009 and also questioned the CFO's judgment in raising the issue of his pensionable pay with the payroll team. However, he found no wrong-doing or criminality by/of the Chief Fire Officer.

- 2.2 The Audit and Standards Committee passed a number of resolutions. They condemned the fact that the FRA had not been involved in decisions regarding the CFO's secondment to Warwickshire and that these arrangements had left the Authority disadvantaged financially, whereas the CFO had benefitted financially. The Committee called for further reports on various aspects of the matter.
3. Consideration by the Fire and Rescue Authority
- 3.1 The FRA considered the matter at its meeting on 18 October 2018. At that meeting, the FRA received a report from the Treasurer setting out the salary rates and employer costs over the period 2009 to 2018 which illustrated the impact of abatement and the savings from this that had arisen for the FRA.
- 3.2 The FRA resolved that the external auditors be asked to consider all the available evidence to consider whether the current processes and procedures satisfied the requirements for openness, transparency and the need to demonstrate probity in the conduct of the business of a public authority.
- 3.3 The FRA also instructed the Assistant Chief Officer (HR and OD) to report to the next meeting of the Audit and Standards Committee providing information on the decision to use the CFO's salary in the final year as the basis for abatement rather than his salary on the last day of service, whether in-service or inter-service abatement should have been applied and what effect abatement had in relation to savings and costs to the service.
4. Abatement of Salary
- 4.1 On 6 December 2018 the Assistant Chief Officer (HR and OD) submitted a report to the Audit and Standards Committee explaining the rationale behind the decision taken in 2010 to use the CFO's final year's pay as the basis to abate the CFO's pension and the subsequent decision to abate the CFO's salary rather than his pension. This decision was taken in May 2012 by the Chair after consultation with the Executive and coincided with a decision to extend the CFO's fixed term contract for two years. However, the Executive had not been made aware that the decision to abate salary rather than pension was contrary to guidance at the time.
- 4.2 The Assistant Chief Officer's report referred back to the basis on which the FRA had decided to allow the CFO to retire and be re-engaged in December 2009. The ACO explained that it was the practice at that time to use an employee's last full

year's salary for the purpose of determining the amount of abatement and that the level of abatement to be applied to the CFO had been determined on this basis.

- 4.3 The Committee had some further concerns about decision making process but noted that the external auditors were aware of these issues and decided to review the situation following receipt of the auditors' report.
- 4.4 The decision to use the last full year's salary, including temporary allowances, for abatement has and continues to result in a higher cost to the public purse.

5. Reference to the External Auditors

- 5.1 The FRA's Treasurer and Monitoring Officer met and briefed the Associate Partner from EY on the issues that had arisen. The auditor decided to take his own legal advice and he has shared this advice with the FRA's officers. The solicitors consulted by the auditor raised questions about the legality of the original decision taken in 2009 to treat the allowance received by the CFO as pensionable and also about the decision taken in 2012 to abate the CFO's salary rather than his pension. (Copies of this legal advice have been made available to the members of the Audit and Standards Committee on a confidential basis.) In view of the questions about the legal position, the auditor recommended that the FRA should take further legal advice from specialist counsel.

6. Counsel's Advice

- 6.1 The Secretary/Monitoring Officer instructed Naomi Ling of counsel to advise. In summary, Ms Ling has advised as follows:
 - The decision to treat the allowance received by the CFO during his secondment to Warwickshire County Council from February to October 2009 as pensionable was lawful, though this was marginal. This was a matter of statutory construction, not a matter over which the FRA had discretion.
 - The decision taken on in December 2009 to allow the CFO to retire and be re-engaged and to base abatement on his final year's pay was lawful.
 - The decision taken in May 2012 to abate the CFO's salary instead of his pension was also lawful, although contrary to guidance.

- To the extent that there was any doubt about whether those who took these decisions on behalf of the FRA had delegated power to do so, it was open to the FRA to ratify the decisions now and they should consider doing so. This aspect of the matter is considered further in paragraph 7.
- The FRA could consider re-making the 2010 and 2012 decisions to take into account and give effect to DCLG guidance (Circular FPSC 10/2009).

7.0 Governance Failings

- 7.1 The investigations that have taken place into this matter have revealed some weaknesses in the governance arrangements that were in place during the relevant period.
- 7.2 The decision to treat the allowance received by the CFO whilst he was seconded to Warwickshire County Council as pensionable appears to have been taken by the Director of HR without reference to the FRA. (It is unclear to whether the FRA's Chairman was consulted about this.) The decision to permit the CFO to retire on his 50th birthday and to re-engage him immediately on a fixed term contract was taken by the FRA Chair with the support of the Executive. The same decision-making process was adopted in 2012 when the decision was taken to extend the CFO's fixed term contract and to abate his salary instead of his pension.
- 7.3 The FRA as a whole was not involved in these decisions and it seems to have been the practice at the time for such matters to be decided by the Chair in consultation with the Executive rather than by a formal decision-making body.
- 7.4 These weaknesses have now been addressed in changes that have been introduced since 2016 and will be further strengthened following the governance review that is currently taking place. In particular, it is proposed that the Executive Committee will be responsible for managing the employment relationship between the CFO and the FRA.

8. Publication

- 8.1 This report contains exempt information as defined in paragraphs 1, 2 and 3 of Schedule 12A of the Local Government Act 1972. The report considers matters that affect the CFO's salary and pension. Standing Orders provide that when matters

affecting an individual employee are under discussion, the FRA should first decide whether or not the power to exclude the public should be exercised.

- 8.2 Until now, the FRA has excluded the press and public from meetings when the matter has been under discussion. However, now that the investigations have been completed, it may be appropriate to make this report public in the interest of openness and transparency.
- 8.3 When deciding whether or not to disclose a report containing exempt information, the Authority is required to balance the advantage of maintaining the exemption against the advantage of public disclosure and determine the matter on that basis.

9. Legal Implications

- 9.1 The legal implications are set out in the body of the report. Counsel has advised that the High Court recently considered the definition of pensionable pay under the Firefighters' Pension Scheme 1992 in another case. Counsel has considered whether the judgement in that case has any implications for our own situation. However, she has concluded that we are no further forward in terms of understanding whether uplifts for temporary promotions were pensionable prior to 2013. Therefore, counsel does not revise her view that, on balance, the allowance paid to the CFO during his secondment to Warwickshire in 2009 was probably pensionable (whilst acknowledging that this was a marginal judgement).

**JOHN ATKINSON
SECRETARY/MONITORING OFFICER**

Report for the Bedfordshire Fire & Rescue Authority - May 2019

1. In 2017 the Chief Fire Officer raised an issue with the Bedfordshire Fire & Rescue Authority (BFRA) Monitoring Officer about the treatment for pension purposes of an allowance he had received whilst he was seconded to Warwickshire in 2009.
2. The Monitoring Officer carried out an immediate review that he shared with the 2017 BFRA Chair and Vice Chair and a decision was made to have an independent review because of, in part, an apparent lack of governance in the BFRA decision-making process between 2009 to 2012.
3. The independent review was conducted by a specialist solicitor and he interviewed the principal BFRA Members involved in the decision making, the CFO and key officers serving at Bedfordshire Fire & Rescue Service (BFRS) during the period 2009 to 2012. The independent investigator found that there had been no wrongdoing or criminality on behalf of the Chief Fire Officer, though he was critical of the manner in which certain decisions about the Chief Fire Officer's pension had been taken. It was recognised that the Chief Fire Officer was not present when these decisions were taken.
4. Records showed that the FRA's external auditors at the time were consulted about the treatment of the CFO's pension. They took legal advice and raised no concerns with the arrangements.
5. The independent investigator's report was shared with the Audit & Standards Committee in September 2018 and with the FRA in October 2018. The FRA asked EY, the current external auditors, to consider whether the FRA's current processes and procedures satisfied the requirements for openness, transparency and the need to demonstrate probity in the conduct of the business of a public authority.
6. At the suggestion of the external auditor, the FRA sought legal advice from specialist Counsel on the lawfulness of the arrangements.
7. From all of the above, the conclusions are that;
 - i. Based on specialist counsel's advice decisions taken in 2009 and 2012 were legal and within the powers of the Fire & Rescue Authority.
 - ii. There was no criminal, unlawful or dishonest behaviour by any Member or officer of the Bedfordshire Fire & Rescue Authority.
 - iii. However, there were governance failings in 2009 and 2012. There is no evidence to show that the decision to treat the allowance received by the CFO during his period of secondment in 2009 as pensionable was referred to members who therefore had no opportunity to consider the options and make an informed decision. This failing in corporate governance has given rise to a potential loss to taxpayers. However, this potential loss is balanced by the savings accrued to the FRA as a result of the decision to abate the CFO's pension/salary.

- iv. Steps have now been taken to significantly improve the governance processes within the Authority. The arrangements for taking decisions in between meetings have been formalised by the establishment of a standing Executive Committee and it is proposed that in future the Executive Committee should be responsible for managing the employment relationship between the Authority and the Chief Fire Officer.
 - v. The Authority believes that matters have been thoroughly examined through the investigations by those outside the Authority with expertise in this area, and by the Audit & Standards Committee, and in noting the conclusions as above, regard this matter as closed. In the event of any FOI request this paper will be produced in response. To do otherwise might breach confidentiality relating to an individual's personal data and affairs.
8. The Secretary/Monitoring Officer will write formally to the Chief Officer, from the Fire Authority informing him of these conclusions and the formal closure of these matters.